



Fact sheet: Legal Challenge to CAO Referenda Filed in King County

Background

King County will continue to grow. By 2022, a quarter of a million new residents are expected. More than a decade ago with the Growth Management Act (GMA), Washington State made a regional decision to reduce urban sprawl and ensure growth happens in a planned way. According to the Growth Management Hearings Board, the GMA was adopted because the Washington State Legislature found that uncoordinated and unplanned growth posed a threat to the environment, sustainable economic development, and the quality of life in Washington.

The Growth Management Act requires the County to periodically update its Comprehensive Plan and Critical Areas regulations. In 1995, the state legislature also imposed stricter scientific guidelines upon which Critical Areas regulations must be based (RCW 36.70A.172).

In order to meet the state mandated growth management deadline, King County released the first draft of the regulations in 2002 to ensure enough time for several rounds of public review and comment. In 2004, a final round of changes were made based on thousands of comments. The County Council then adopted the updated critical areas regulations.

What is the Critical Areas Package?

The Critical Areas Package is a set of three ordinances that update King County's protections for streams, wetlands, wildlife and drinking water. These regulations not only protect natural resources for future generations, but they also prevent property damage from flooding and erosion.

The final Critical Areas Package (Critical Areas Ordinance, Stormwater Ordinance, and Clearing and Grading Ordinance) adopted by the County Council in October incorporates incentives and tax breaks and makes farming and forestry easier. Since the Critical Areas Package was adopted, the County has engaged in a public information program to advise people of the new code requirements. The three ordinances in the Critical Areas Package will go into effect on January 1, 2005.

Why have a Critical Areas Package?

Keep water plentiful and clean. Thirty percent of King County residents rely on drinking water from groundwater sources. One of the most common concerns that the county hears is about land clearing on a neighboring property, and the resulting damage to homes, farms, and streams. Significant damage to streams can be prevented if we can keep 65 percent of the forest cover in our rural basins. Not only do forests keep the water clean for fish and wildlife, they also return more water to aquifers, ensuring a steady supply of well water for rural property owners.

Protect property from stormwater flooding, erosion & landslides. To protect property from flooding, the new regulations include a stormwater review process for new development that ensures new development won't cause flooding of surrounding property. The CAO continues nationally-recognized flood hazard regulations that qualify county residents for discounts on flood insurance.

Keep our rural areas rural. The types of uses allowed on a property before critical areas regulations are still allowed. The Critical Areas Package protects the rights of rural residents to harvest timber, keep horses, raise crops and clear brush to prevent wildfires. It builds in incentives to protect water quality and restore damaged streams. The ordinances also include the option of Rural Stewardship Plans, Farm Plans, and Forest Management Plans as an alternative to "one size fits all" regulations. These plans make it possible to tailor environmental protections to a landowner's goals and the conditions on a specific property.

What happens if King County does not comply with Washington State's Growth Management Act?

The state imposed deadline for the County to adopt critical areas updates based on "best available science" is December 1, 2004.

If the referenda process continues and King County's Critical Areas Package does not go into effect, the county will be out of compliance with Washington's Growth Management Act which can result in punitive sanctions invoked by the Growth Management Hearings Board or the Governor.

The appropriate way to appeal growth management and critical areas regulations is with the Growth Management Hearings Board. <http://www.gmhb.wa.gov>

How have courts ruled in the past on similar issues?

Three separate court cases in Washington hold that local ordinances that implement the Growth Management Act are not subject to referendum and initiative. The obligation to act under the GMA has been delegated to the elected legislative authority.

1. *Whatcom County v. Brisbane*, 125 Wn.2d 345, 350 (1994)

The State Supreme Court held that Whatcom County's critical areas ordinance was not subject to amendment by referendum as the power to act under the GMA was statutorily delegated to the "legislative authority" of the county.

[<<http://www.mrsc.org/mc/courts/supreme/125wn2d/125wn2d0345.htm>>](http://www.mrsc.org/mc/courts/supreme/125wn2d/125wn2d0345.htm)

2. *Snohomish County v. Anderson*, 123 Wn.2d 151, 159 (1994)

The State Supreme Court held that an ordinance establishing general countywide planning policies pursuant to the GMA was not subject to referendum for the same reason that the obligation to act under the GMA was statutorily delegated to the "legislative authority" of the county.

[<<http://www.mrsc.org/mc/courts/supreme/123wn2d/123wn2d0151.htm>>](http://www.mrsc.org/mc/courts/supreme/123wn2d/123wn2d0151.htm)

3. *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382 (2004)

The Court of Appeals, Division I, recently relied on *Brisbane* and *Anderson* in rejecting a City of Seattle initiative for creek restoration that included regulation of development over and near creeks. The court said just as citizens cannot use the referendum process to repeal GMA ordinances, they cannot use the initiative process to enact GMA development regulations.

[<<http://www.mrsc.org/Subjects/Legal/decs.aspx>>](http://www.mrsc.org/Subjects/Legal/decs.aspx)

Public Involvement Timeline

2002

Public comment on the CAO begins which includes focus groups, community meetings and a mailing of 130,000 to all of unincorporated King County about the proposed changes.

Spring 2004

King County Executive transmits Critical Areas Package to Metropolitan King County Council.

Spring, Summer and Fall, 2004

King County Council makes changes based

on thousands of comments.

October 25, 2004

King County Council adopts the three ordinances that comprise the CAO.

Fall 2004

Public mailing about adopted ordinance and comment period outlining rules for implementation of CAO.

December 1, 2004

Washington State deadline for updating critical areas regulations.

Other Resources

Growth Management Hearings Board
<http://www.gmhb.wa.gov>

Washington State Department of Community,
Trade & Economic Development
<http://www.cted.wa.gov>

Municipal Research & Services Center of
Washington
<http://www.mrsc.org/>